APPENDIX

1. Section 3 of the Communications Act [47 U.S.C. 153] provides in pertinent part:

Definitions.

For the purposes of this Act, unless the context otherwise requires—

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(10) Common Carrier.

The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

* * * *

(20) Information Service.

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

* * * *

(43) Telecommunications.

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(44) Telecommunications Carrier.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

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(46) Telecommunications Service.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

* * * *

(48) Telephone Toll Service.

The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

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2. Section 10 of the Communications Act [47 U.S.C. 160] provides:

Competition in Provision of Telecommunications Service.

(a) Regulatory Flexibility.

Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

(b) Competitive Effect to be Weighed.

In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

(c) Petition for Forbearance.

Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or

carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

(d) Limitation.

Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

(e) State Enforcement After Commission Forbearance.

A State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a).

3. Section 201 of the Communications Act [47 U.S.C. 201] provides:

Service and Charges.

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such

charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful: *Provided,* That communications by wire or radio subject to this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government and such other classes as the Commission may decide to be just and reasonable, and different charges may be made for different classes of communications: *Provided further,* That nothing in this Act or in any other provision of law shall be construed to prevent a common carrier subject to this Act from entering into or operating under any contract with any common carrier not subject to this Act, for the exchange of their services, if the Commission is of the opinion that such contract is not contrary to the public interest: *Provided further*, That nothing in this Act or in any other provision of law shall prevent a common carrier subject to this Act from furnishing reports of positions of ships at sea to newspapers of general circulation, either at a nominal charge or without charge, provided the name of such common carrier is displayed along with such ship position reports. The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.

4. Section 202 of the Communications Act [47 U.S.C. 202] provides:

Discrimination and Preferences.

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any

particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

(b) Charges or services, whenever referred to in this Act, include charges for, or services in conjunction with, the use of common carrier lines of communication, whether derived from wire or radio facilities, in chain broadcasting or incidental to radio communication of any kind.

(c) Any carrier who knowingly violates the provisions of this section shall forfeit to the United States the sum of $6,000 for each such offense and $300 for each and every day of the continuance of such offense.

5. Section 251 of the Communications Act [47 U.S.C. 251] provides in pertinent part:

Interconnection.

(a) General Duty of Telecommunications Carriers.—Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

* * * *

(i) Savings Provision.—Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201.

6. Section 332 of the Communications Act [47 U.S.C. 332] provides in pertinent part:

Intercommunication in Mobile Service.

* * * *

(c) Regulatory Treatment of Mobile Services.—

(1) Common Carrier Treatment of Commercial Mobile Services.—(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

* * * *

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of

this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

* * * *

(2) Non-Common Carrier Treatment of Private Mobile Services. —A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. * * *

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7. Section 621 of the Communications Act [47 U.S.C. 541] provides in pertinent part:

General Franchise Requirements.

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(c) Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

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8. Section 651 of the Communications Act [47 U.S.C. 571] provides in pertinent part:

Regulatory Treatment of Video Programming Services.

(a) Limitations on Cable Regulation.—

* * * *

(3) Cable Systems and Open Video Systems.—To the extent that a common carrier is providing video programming

to its subscribers in any manner other than that described in paragraphs (1) and (2)—

(A) such carrier shall be subject to the requirements of this title, unless such programming is provided by means of an open video system for which the Commission has approved a certification under section 653; or

(B) if such programming is provided by means of an open video system for which the Commission has approved a certification under section 653, such carrier shall be subject to parts I through IV of this title only as provided in 653(c).

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9. Section 102 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1001] provides in pertinent part:

Definitions.

For purposes of this title—

* * * *

(6) The term "information services"—

(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and;

(B) includes—

(i) a service that permits a customer to retrieve stored information from, or file information for storage in, information storage facilities;

(ii) electronic publishing; and

(iii) electronic messaging services; but

(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

* * * *

(8) The term "telecommunications carrier"—

* * * *

(C) does not include—

(i) persons or entities insofar as they are engaged in providing information services; and

(ii) any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.

10. Section 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 153 [Reproduced at 47 U.S.C. 157 note] provides:

Advanced Telecommunications Incentives.

(a) In General.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) Inquiry.—The Commission shall, within 30 months after the date of enactment of this Act and regularly thereafter, initiate a notice of inquiry concerning the availability of

advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) Definitions.—For the purposes of this subsection:

(1) Advanced Telecommunications capability.—The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) Elementary and Secondary Schools.—The term 'elementary and secondary schools' means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).